

## CHAPTER 8: RENTAL SUBSIDIES

### 8.1 INTRODUCTION

Rental subsidies are deep subsidies that enhance the affordability of rents in a project. Each year, the Agency has available a limited number of Agency-funded rental assistance units that can be allocated to new or existing Agency-financed multi-family housing projects. The Agency also encourages the use of non-Agency rental subsidies in multi-family housing projects as a way to reduce tenants' rents.

Because rental subsidies are limited, it is important that they be allocated to borrowers and distributed to tenants in a fair and equitable manner. Consequently, the Agency has developed rules that must be followed in the distribution and administration of rental subsidies. This chapter presents the program rules and procedures for allocating and administering rental subsidies in multi-family housing projects, including Farm Labor Housing projects. It covers not only Agency-funded rental assistance, but HUD and other types of subsidies as well.

For purposes of this chapter, the term “tenant” also means “member” and “rental assistance” is reserved for use in describing Agency-financed rental subsidy.

### 8.2 AUTHORIZED RENTAL SUBSIDIES [7 CFR 3560.252]

#### A. Project-Based Rental Subsidy

The Agency may authorize the use of project-based rental subsidies in addition to interest credit for multi-family housing projects. These rental subsidies may take the form of:

- **Agency-funded rental assistance.** This is a project-based subsidy program available to very low and low-income tenants in Agency-financed multi-family housing.
- **HUD Section 8 assistance.** This project-based subsidy is administered by HUD and was used extensively with Agency-financed housing from the mid-1970s to the early 1980s.
- **Private rental subsidy.** This is a subsidy program whereby the project owner(s) or others enter into an agreement with the Agency to provide and fund subsidy to tenants of the project on approximately the same basis as the Agency-funded rental assistance program. In some instances, the agreement may include a limit on the number of units and a per unit ceiling on the amount of assistance.
- **State or local rental subsidy.** Such subsidy is provided and funded by some States and available to borrowers to assist tenants on approximately the same basis as the Agency rental assistance program. The assistance is in the form of a contract between the borrower and the State and has the Agency's concurrence.

## **B. Tenant-Based Rental Assistance**

HUD Section 8 Rental Certificates or Rental Vouchers may be accepted by borrowers in Agency-funded multi-family housing. These subsidies are administered by HUD or others authorized to administer the program such as a State Housing Finance Agency or the local public housing agency. Projects accepting tenants who use such vouchers assigned by a local public housing agency will also comply with any requirements imposed by that agency.

## **C. Multiple Subsidies**

More than one type of subsidy may be used in a project. The rental subsidy the tenant is receiving must be less than the full amount of Agency rental assistance for which the tenant would qualify. In such cases, the Agency may provide the difference between the subsidy received by the tenant and the amount of Agency rental assistance for which the tenant qualifies.

There are special tenant codes under Part II, item 6 of the MFIS Tenant Certification to denote what types of subsidy, if any, a tenant is receiving, and whether the tenant is receiving full or partial subsidy from a source other than the Agency.

# **SECTION 1: ALLOCATION OF AGENCY RENTAL ASSISTANCE**

## **8.3 AGENCY-FUNDED RENTAL ASSISTANCE**

The objective of the Agency rental assistance (RA) program is to reduce rents paid by low-income households. RA is the portion of approved shelter cost (rent and utilities) paid by the Agency to the borrower on behalf of a tenant to compensate for the difference between the approved shelter cost and the monthly tenant contribution as calculated on the tenant certification form. When the household's monthly gross tenant contribution is less than the approved utility allowance that is billed directly to and paid by the tenant, the owner will pay the household that difference.

RA may only be provided to tenants who are eligible and residing in eligible units. There are three types of RA:

- Replacement RA is RA that replaces RA agreements or HUD Section 8 contracts expiring because the obligated funds under the agreement have been fully disbursed. Because the Agency wishes to protect tenants currently benefiting from RA, replacement of RA and HUD Section 8 contracts receive first priority for funding from the Agency.
- Servicing RA is RA that increases the number of RA units in a project resulting in an initial RA agreement or an amendment to an existing agreement with a borrower.
- New construction RA is RA to accompany new units of multi-family housing.

- Incentive RA is RA that is used to help preserve multi-family housing projects as part of the prepayment process.

## **8.4 ALLOCATION AND DISTRIBUTION OF AGENCY RA [7 CFR 3560.253]**

### **A. Allocation of RA to the States by the National Office**

RA is allocated to the states on an annual basis by the National Office and in an amount based on Congressional appropriations. The National Office uses RD Instruction 1940-L, Methodology and Formulas for Allocations of Loan and Grant Program Funds to allocate the RA and to provide guidance to the states on how to distribute the RA among projects.

Before the beginning of the fiscal year, the National Office sends out a survey to each state requesting summary data on the need for RA in each state. This data is used to allocate replacement and servicing RA. New construction RA is allocated to each state based on a formula.

### **B. Prioritization of RA**

In the absence of other guidance from the National Office, States will use the following priorities to allocate RA within the state:

- Replacements units. First priority will be for replacing RA units that are expiring.
- New construction. Second priority will be for RA to accompany new construction.
  - ◇ RA units will be allocated to those projects that are selected for funding under the Notice of Funding Availability (NOFA) system and in accordance with the scoring and ranking system described in Chapter 4, Processing NOFA Responses—Stage 1, of the Loan Origination Handbook.
  - ◇ For labor housing projects, RA units will be allocated by the National Office from the National Office reserve on a case-by-case basis at the time the projects are considered for funding at the National Office level.
- Servicing assistance. Third priority is for RA for existing multi-family housing projects that have requested servicing RA by checking the appropriate box on the budget *Form RD 1930-7, Multi-Family Housing Project Budget*.

Incentive RA is not allocated by priority. The National Office usually allocates incentive RA from a special set-aside of funds.

## 8.5 PROJECT ELIGIBILITY FOR AGENCY RA [7 CFR 3560.254]

### A. Project Eligibility

In order to be eligible for RA, a project must be designated as one of the following types according to the loan agreement:

- ◇ A Plan II interest credit project. If a project is not currently a Plan II project, it may be possible to change to Plan II and thereby become eligible. Exhibit 8-1 lists which types of projects may switch to Plan II and which may not.
- ◇ An off-farm labor housing project; however, those off-farm projects that are financed with grants only are not eligible.
- ◇ A project financed with a direct or insured Rural Rental Housing Loan approved prior to August 1, 1968. In order to be eligible, the project must be operated under an interest credit agreement that identifies the housing project as a Plan RA project.
- ◇ A project funded by multiple sources, including Agency financing, for which the loan must be a Plan II interest credit loan.

**Exhibit 8-1**

**Project Eligibility for Rental Assistance**

Project Type	Eligible for RA	Not Eligible for RA	Can Convert to Plan II
On-Farm Labor Housing		X	NO
Off-Farm Labor Housing	X		
For Profit		X	YES
Plan I		X	YES
Plan II	X		
Section 8/515 with No Interest Credit		X	YES
Section 8/515 with Interest Credit Reduced by 1%		X	YES
Section 8/515 with Interest Credit Reduced by 2%		X	YES
Section 8/515 with Full Interest Credit	X		

### B. Eligible Units

In order to be eligible for RA, units must be eligible for interest credit not only in terms of the loan agreement, but in terms of habitability, as well.<sup>11</sup> Should a fire, natural cause, or other damage render a unit uninhabitable, the RA may be suspended during rehabilitation or it may move with a tenant to a temporary location. See paragraph 8.8, Transferring RA.

## 8.6 PROCESSING RA REQUESTS [7 CFR 3560.255]

The State Director or a delegated member of the staff approves or disapproves RA requests. *Form RD 1944-7, Multi-Family Housing Interest Credit and RA Agreement*, is the form which records the RA.

When reviewing requests for RA, the Loan Servicer must consider the following questions:

- Is the project/unit eligible for RA? The project must meet the requirements specified in Section 8.5.
- Does the project need the RA? The supporting documentation from the borrower must show that there are tenants or applicants who are eligible for the RA.
- Is the RA available for distribution? The State must have the RA units available.
- How does the RA request fit in with the State's established priorities for distributing RA? The request must rank high enough within the priorities established.

How an RA request gets processed depends upon whether the assistance is for replacement RA, servicing RA, or new construction RA.

## **A. Renewal and Servicing Rental Assistance**

### **1. Tracking Usage of Agency-Funded RA**

The Loan Servicer inputs the information provided by the borrower on *Form RD 1944-29, Worksheet for Credit and Rental Assistance* onto the Automated Multi-Family Accounting System (AMAS). Using AMAS, the Finance Office tracks the use of RA obligations and ensures that RA obligations are not disbursed or credited to a borrower's account in excess of the RA obligation. Quarterly and annually, the Finance Office provides the Loan Servicer with an RA payment and obligation status report for each project. The Loan Servicer must file the annual version of this report in the project case file where it will be maintained indefinitely.

The Field Office must monitor the statewide usage of RA so that it can be reported as expiring and needing replacement when the annual survey is sent out from the National Office ascertaining the need for replacement RA.

### **2. Processing Renewal RA**

Renewal RA must not be awarded in an amount that is more than necessary to cover existing expiring contracts. For example, if a 24-unit project has only 18 units of RA that is expiring, the State Director may not award the project more than 18 units of RA.

RA units are replaced by the Loan Servicer amending *Form RD 1944-27, Rental Assistance Agreement*. When a *Form RD 444-27* initiated prior to May 1, 1985, is replaced or modified, a new *Form RD 1944-27* will be prepared and distributed according to the form's instructions. For every renewal or modification on or after May 1, 1985, the original and all copies of the affected RA agreement will be noted, assembled, and distributed by the Loan Servicer according to the form's instructions.

To the extent that sufficient federal funds are available, the Agency will automatically renew expiring rental assistance agreements at the existing number of units.

If there is no renewal RA available to give to the borrower due to a lack of Congressional appropriations, the Loan Servicer will notify and inform the borrowers that they must notify the affected tenants of their increased rents and give them the option of quitting their leases with no penalties.

### **3. *Section 8 Housing Assistance Payments***

For properties that receive project-based Section 8 assistance from HUD, borrowers must provide copies of their Housing Assistance Payments (HAP) contracts to the Loan Servicer. The Loan Servicer must monitor these contracts, particularly their expiration dates. If the HAP contract expires, the project's loss of Section 8 is through no fault of the borrower, and HUD funds are not available to renew the contract, the Agency will give the project priority to receive RA.

### **4. *Servicing RA***

Borrowers apply for servicing RA by checking a box on the project budget *Form RD 1930-7*, indicating a need for servicing units and certifying that they have looked elsewhere for other rental subsidies. In order to allocate servicing units to a project, the Loan Servicer must verify that the project is eligible and:

- Existing tenants are paying more than 30 percent of their incomes in rent; or
- There are vacancies in the project and evidence that shows that there are very low-income tenants who would occupy the housing if there were RA units available. Such evidence must be in the form of market data and/or waiting lists.

## **B. New Construction Rental Assistance**

New construction RA is requested at the very beginning of the loan application stage. The following requirements must be met in order for the Agency to consider awarding new construction RA:

- The number of units of RA requested must be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants.
- If the RA is going to be part of a project funded by a participation loan, the Agency participation rate needs to be at least 10 percent of the total development cost.

Chapter 5, Processing Initial Applications—Stage 2, of the Loan Origination Handbook provides further details on processing new construction RA.

### **C. Approval and Processing Actions**

When it has been determined that RA can be obligated, the Loan Servicer will prepare and distribute part III of *Form RD 1944-51, Multi-Family Housing Obligation - Fund Analysis* according to the instructions. *Form RD 1944-27, Rental Assistance Agreement*, will not be executed or amended until the obligation or transfer is processed by the Finance Office. The State Office will verify the obligation or transfer via the computer terminal on the day following the request.

When the State Office verifies that RA units have been obligated, the State Office will forward a copy of *Form RD 1944-51* to the Loan Servicer. The Loan Servicer will complete *Form RD 1944-27* and attach the copy of *Form RD 1944-51* according to the instructions on the form. The *Form RD 1944-27* is then filed in the borrower's active case file and a copy is sent to the borrower.

If RA funds are available but cannot be provided due to a determination of ineligibility, the State Director will inform the borrower, in writing, of the reasons and provide the borrower information on appeal rights in accordance with 7 CFR Part 11. See paragraph 1.8 of Chapter 1 for an overview of the appeals process.

Loan applicants or borrowers determined to be eligible for RA as a result of an appeal or funding review will receive RA, if RA funding is available. If the funding is available, the applicant or borrower will receive it beginning with the month following the date of the appeal or funding review decision. If the funding is not available, the applicant or borrower will receive it beginning in the first month that RA funding becomes available.

When an RA request is denied because funds are not available from the State's allocation or the National Office Reserve, the decision is not appealable.

### **D. RA Obligation Numbers**

The Finance Office uses obligation numbers to track RA obligations and undisbursed balances. Refer to the AMAS manual for information on tracking RA obligations.

#### **1. Current Obligations**

When RA is approved, each RA obligation is assigned a six-digit RA obligation number as follows:

- First two digits – Represent the fiscal year in which the funds are obligated (e.g., 96, 97, 98, etc.)
- Second two digits – Represent the number of the RA obligation in sequential order for each fiscal year starting with 01 (e.g., 97-01, 97-02, 97-03, etc.)
- Third two digits – Are coded 00 for all obligations.

For example, the fifth RA obligation made in fiscal year 1997 would be coded: 97-05-00.

## **2. Pre-1985 Obligations**

RA obligations obligated before 1985 were coded as follows:

- First two digits—Represent the fiscal year in which the initial obligation was made on the project (i.e., 78, 79, 80, etc.)
- Second two digits—Relate to the pre-Automated Multi-housing Accounting System conversion loan number to which the RA obligation was processed.
- Third two digits—Indicate the number of modifications plus 1. (*Form RD 1944-27, Rental Assistance Agreement* with two modifications on September 30, 1984, would be designated “03”.)

## **E. Electronic Transmission of Funds**

The Agency implemented the Electronic Funds Transfer (EFT) system to reduce or eliminate paper check processing. This system allows Field Offices to capture banking information outside the Legacy System (AMAS) for the purpose of disbursing funds—loan, grant, rental assistance—electronically. Through this system, the funds are available to the borrower three days after the disbursement transaction occurs.

When a borrower elects to have funds sent through the EFT system, the Loan Servicer sends the borrower *Form SF-3881, Electronic Funds Transfer Payment Enrollment form*. Once this form is completed, the borrower returns the form to the Loan Servicer. The Loan Servicer inputs the information into the EFT system, which is accessed through NITC. It usually takes about two weeks before it becomes effective. The Loan Servicer should follow up to ensure that the banking information is correct and that the EFT is working effectively.

More information regarding EFT can be found in the Electronic Funds Transfer handbook published on the Rural Development Intranet.

## **8.7 TERMS OF AGREEMENT [7 CFR 3560.258]**

*Form RD 1944-27, Rental Assistance Agreement*, is the document that sets out the terms of RA agreement between the Agency and the borrower.

### **A. Terms of Agreement**

Each *Form RD 1944-27, Rental Assistance Agreement*, will be effective the first day of the month in which it is executed. If assistance is granted to a project under an appeal, the amount of the assistance will cover what is needed for an effective date retroactive to the first day of the month in which the assistance was denied, provided the borrower



agrees to make any appropriate refunds to tenants who would have been entitled to RA during the retroactive term.

RA is obligated for five-year terms. The agreement expires when the funds obligated for the RA units described in Section 1 of *Form RD 1944-27, Rental Assistance Agreement* are fully disbursed. This can be any time before or after the end of the five-year period. The Agency has in the past issued 20-year RA agreements. If and when these are renewed, they are done so for five-year terms.

## **B. When Agreements May be Amended**

Loan Servicers may amend RA agreements to:

- Add replacement units for the project to the agreement.
- Add or subtract servicing units assigned to the project through obligation, through transfer from another RA obligation, or as an incentive to avert prepayment.
- Reinstate a suspended RA obligation(s) to a new borrower in the same project after a voluntary conveyance or a foreclosure and a credit sale within the multi-family housing program; or
- Transfer a suspended RA obligation(s) to a new borrower and a different project after liquidation of the project assets or after the loan is paid in full.

## **C. Procedures for Amending Agreements**

The following steps are taken to amend agreements.

- Any existing RA obligation executed prior to February 15, 1983, which will have a remaining obligation balance at the end of the 5-year or 20-year expiration date stated in section 9, “Term of the Agreement,” may be amended by the use of *Form RD 444-27A, Amendment to Rental Assistance Agreement*. The amended agreement will expire when the obligated funds are fully disbursed.
- For every replacement or modification of an RA agreement that occurs on or after May 1, 1985, the original and all copies of the affected RA agreement will be noted, assembled, and distributed by the servicing official according to the form’s instructions. When a *Form RD 444-27, Amendment Rental Assistance Agreement* initiated prior to May 1, 1985, is replaced or modified, a new *Form RD 1944-27, Rental Assistance Agreement* will be prepared and distributed according to the form’s instructions.
- The Loan Servicer must use the new form so that eventually all borrowers will be using the new form.

**D. Consolidating Agreements Prohibited**

Consolidation of RA agreements is prohibited.

**E. Replacing Expiring Obligations**

The Agency will renew all expiring obligations with five-year obligations to the extent funds are appropriated. Expiring 20-year obligations will be replaced with five-year obligations.

Expiring RA obligations and replacement RA obligations may run concurrently for a period of 30–50 days so any undisbursed obligation balance on the expiring RA agreement can be liquidated.

**8.8 TRANSFERRING RA [7 CFR 3560.259]**

RA agreements will never be canceled or terminated. Instead, the State Director will transfer them.

**A. Cases in Which RA May be Transferred**

The State Director may transfer RA in the following instances.

**1. *At Project Transfer***

When a project is transferred to an eligible borrower, the transferee may assume the transferor's unliquidated RA obligation(s).

**2. *Following Voluntary Conveyance or Foreclosure Sale***

When a project with RA is voluntarily conveyed to the Agency or acquired by foreclosure sale, the RA obligation will be automatically suspended under the borrower's name when the Finance Office processes *Form RD 1965-19, Multi-Family Housing Advice of Mortgaged Real Estate Acquired*. The RA for these units will be held in suspension until the final disposition of the acquired property has been determined, at which time the RA will be transferred to a different Agency-financed project, if applicable, or, if not, to another project at the State Director's discretion. During the inventory period, tenants will pay 30 percent of their incomes for rent. Tenants entitled to reimbursement for utilities will be paid from project income.

**3. *Following Liquidation or Prepayment***

When a project with RA is liquidated through sale outside of the program or the loan is paid in full, the RA will be transferred to a different Agency-financed project, if applicable, or, if not, to another project at the State Director's discretion.

#### ***4. When Not Being Used After Initial Rent-Up***

RA that is not being used may be transferred with or without the borrower's consent or request.

When RA is unused after initial rent-up and not needed because of a lack of eligible potential tenants in the area, all or a portion of it may be transferred by the State Director under the following conditions:

- The Servicing Official recommends the RA transfer after reviewing documentation submitted by the borrower.
- The borrower describes the efforts made to market the subsidized units and further demonstrates that the market survey indicated there should be a significant need for rental housing by households in the market area that would have required RA for occupancy, but all or a substantial portion of the RA units available remain unused after a two-year period since initial availability. The borrower must:
  - ◊ Document the efforts made to market the project to RA eligible applicants;
  - ◊ Demonstrate that the waiting list does not contain RA eligible applicants and the project is not occupied by RA eligible tenants who do not receive RA; and
  - ◊ Certify that project management has not used a policy of discouraging RA eligible households from applying for or obtaining tenancy in the project.
- The borrower demonstrates that rent increases anticipated for the following two years will not prompt a request for RA.

#### ***5. When Not Being Used Four Months or Later After the Initial Year of the Agreement***

If, after the end of the initial year of an RA agreement, the borrower has not used a portion of the RA units for any ensuing consecutive four-month period, the State Director may transfer the number of unused units, minus at least one, to another project without the borrower's request. If the remaining unit(s) remain unused after an additional four-month period, the State Director may authorize its transfer to another project. This would apply only if the current agreement is on *Form RD 1944-27, Rental Assistance Agreement* and when:

- The borrower has made efforts to market the project as described in paragraph 8.8 A.5 above.
- The Servicing Official has reviewed the project occupancy list, waiting list, past RA usage, and any other data available and verified that there is no apparent RA need in the project.

- The State Director has notified the borrower at least 30 days in advance of the Agency's intent to transfer the RA units and has given the borrower appropriate appeal rights in accordance with RD Instruction 1900-B, Adverse Decisions and Administrative Appeals.
- If the borrower appeals the decision, the appeal is resolved in accordance with RD Instruction 1900-B, Adverse Decisions and Administrative Appeals before any transfer action is taken.
- The transfer will take place in accordance with transfer procedures described in paragraph 8.8 C below.

#### **6. *Due to An Unclosable Loan***

When RA will be unused because the loan to which it was obligated will not be closed, or the RA agreement is not signed, the RA obligation may not be transferred except when the circumstances allow for the funds to finance the project to be transferred as well. However, if this situation occurs during the same fiscal year of obligation, the obligation must be canceled and reallocated immediately using current authorities. Obligations from prior fiscal years must be canceled and will be lost unless the conditions allow the financing for the project to be transferred, in which case the RA may be transferred as well.

#### **7. *In Response to A Disaster***

If a disaster renders a project temporarily or permanently uninhabitable, the RA will be transferred.

#### **8. *Due to A Servicing Action***

The State Director will suspend RA in a project where the loan has been accelerated to the extent that no payments will be credited to the project's account. Interest credit will be credited to the project's account until the appeal period for the acceleration has expired. After the expiration of the appeal period, if it is determined that foreclosure will proceed, the interest credit will be canceled as of the last day of the month in which the appeal period expired. RA will be automatically suspended by the interest credit cancellation.

That portion of the monthly RA not needed to pay the project monthly installment and other charges, including any delinquencies, overage, and late fees may be processed and returned to the project operating account to maintain project operation. RA agreements expiring during the acceleration and appeal process may be renewed in order to continue payment of RA for this purpose, but only if a third party is managing the project to ensure the proper use of project funds.

After final disposition of the acceleration, expiration of the appeal, and redemption period of the defaulting borrower the RA will be either transferred with a credit sale,

transferred to a different project when the defaulting project is sold outside the program, or reinstated to the same project as follows:

- **Transferred with a credit sale.** If the project is sold through a credit sale to an eligible borrower within the program, the suspended RA should be transferred from the previous borrower's case number and project number to the new case number and project number. *Form RD 1944-55, Multi-Family Housing Transfer of RA*, will be attached to *Form RD 1965-20, Multi-Family Housing Advice of Mortgaged Real Estate Sold*, when it is sent to the Finance Office.
- **Transferred to a different project.** If a defaulting project is sold outside the program, the RA must be transferred to a different project.
- **Reinstated to the same project.** When defaults are corrected, the State Director may reinstate the RA to the borrower's account.

The State Director will apprise the borrowers of their appeal rights under 7 CFR Part 1900, subpart B upon notification of the pending suspension. The suspension will not be effective until these appeal rights have been exhausted.

## **B. Transferring RA for Displaced Tenants**

The State Director may transfer RA from one project to another eligible multi-family housing project to which a tenant is moving due to displacement as a result of prepayment, liquidation, or a natural disaster for that tenant's initial use.

The displaced tenant will be given first priority for a unit of RA, regardless of other priorities for the RA, if all of the following conditions are met:

- The borrower is eligible to receive and administer RA.
- The tenant is eligible to occupy the project and to receive RA.
- The tenant has taken all of the following steps to ensure eligibility to receive priority for the unit of RA:
  - ◊ Has been placed on at least one waiting list for an Agency-financed project with a Letter of Priority Entitlement.
  - ◊ Moved to the project as soon as the name was reached on a waiting list, even if it meant temporarily occupying an ineligible unit. The ineligible unit may not differ from the one for which the tenant is eligible by more than one bedroom.
  - ◊ Moved to an eligible unit as soon as one was available.
- The RA has not previously been transferred for the tenant's current displacement.

The tenant must begin using the RA within four months of the transfer or it will become available for use by the next eligible tenant in the project.

### **C. Process for Transferring**

Only the State Director may approve an RA transfer. RA may be transferred to any borrower with an RA eligible project according to the priorities established in this handbook or by the National Office. All or any portion of the units in an RA agreement with an undisbursed balance may be transferred from one project to another.

When the State Director approves an RA transfer, the Loan Servicer uses *Form RD 1944-55, Multi-Family Housing Transfer of Rental Assistance*, completed according to the instructions, to notify the Finance Office.

AMAS determines the per unit value of the RA obligation being transferred by dividing the undisbursed balance of the RA obligation on the date the transfer is processed by the number of RA units in the agreement. The number of units being transferred times the per-unit value equals the total amount transferred. After the transfer processes, the Loan Servicer must enter the dollar amount of the transfer in the Remarks area of *Form RD 1944-55, Multi-Family Housing Transfer of Rental Assistance*.

RA units identified by different RA obligation numbers may be transferred. New RA obligation numbers should be assigned according to the instructions for *Form RD 1944-55, Multi-Family Housing Transfer of Rental Assistance* and as described in paragraph 8.6 E.

The Loan Servicer will complete *Form RD 1944-27, Rental Assistance Agreement*, with *Form RD 1944-55, Multi-Family Housing Transfer of Rental Assistance* attached. These will be completed according to the instructions for each transferee. The transferee may use the transferred units effective the first day of the month in which the transfer is approved.

The Loan Servicer will amend the transferor's *Form RD 1944-27, Rental Assistance Agreement* by attaching a copy of *Form RD 1944-55, Multi-Family Housing Transfer of Rental Assistance* according to the instructions to indicate that a portion of the agreement has been transferred. When all of the RA units on a RA agreement have been transferred, the transferor's present agreement will be so documented.

## SECTION 2: ADMINISTRATION OF RENTAL ASSISTANCE

### 8.9 PAYING RA [7 CFR 3560.256]

The Agency pays RA to the borrower based on monthly documentation submitted by the borrower.

#### A. Making RA Payments to Borrowers

An RA payment request is based on actual occupancy as of the first day of the month. In order to receive RA, borrowers must submit to the Servicing Office on a monthly basis *Form RD 1944-29, Worksheet for Credit and Rental Assistance*, and any new tenant certification *Forms RD 1944-8, Rural Housing Service Tenant Certification* for new tenants receiving rental assistance. Both forms must be prepared for each project according to the instructions on the forms.

Borrower requests for RA payments must be based on the difference between basic rent plus utility allowances for each rental unit eligible for RA and the net tenant contribution of the tenant occupying the RA eligible unit.

When new *Forms RD 1944-8* are received, the Loan Servicer will:

- Date stamp each form with the receivable date.
- Review each *Form RD 1944-8* and verify that the information contained on the form is complete and correctly computed based on information contained in the form.

When a *Form RD 1944-29* is received, the Loan Servicer will:

- Date stamp each *Form RD 1944-29* and review the form and ensure that entries are supported by the current *Form RD 1944-8*.
- Enter the payment data using Field Office terminals.
- Verify the accuracy of the borrower's servicing address shown on the Finance Office record. When the address shown is incorrect, corrections must be made on AMAS screen M5A "Record Borrower/Project Data" using a field computer terminal.

In calculating the RA payment due on *Form RD 1944-29*, the borrower will deduct from the amount due the balance of scheduled loan payments, any delinquent payments, and other charges and submit any remaining balance to the Field Office by check. If the RA due the borrower exceeds the balance of scheduled loan payments, delinquent payments and other charges, no additional payment is due from the borrower and an RA check for the excess will be issued by the Finance Office.

### **Examples**

**Example 1:** Borrower Olson shows on *Form RD 1944-29, Worksheet for Credit and Rental Assistance* for the month of May a loan payment due to the Agency of \$1,865 and RA due from the Agency of \$3,600. The Finance Office sends Olson a check for \$1,735.

**Example 2:** Borrower Johnson shows on *Form RD 1944-29, Worksheet for Credit and Rental Assistance* for the month of May a loan payment of \$2,200 due to the Agency and RA of \$1,200 due from the Agency. Johnson must attach a check made out to the Agency in the amount of \$1,000.

When a project account is delinquent, the Loan Servicer may agree to release a portion of the monthly RA for project operation according to provisions authorized in a work-out agreement.

### **B. Canceling an RA Check**

When an RA check needs to be canceled, such as when it is returned, or if the borrower must return an RA payment, the Loan Servicer will take the following steps:

- When the original U.S. Treasury check covering the RA is returned, prepare *Form RD 1944-53, Multi-Family Housing Cancellation of U.S. Treasury Check and/or Obligation* and mail it to the multi-family housing unit in the Finance Office.
- When all or a portion of the monthly RA payment needs to be returned or if a refund of RA previously advanced is required, the borrower should submit a check made payable to the Agency to the Field Office which will forward it to the multi-family unit in the Finance Office on *Form RD 1944-53, Multi-Family Housing Cancellation of U.S. Treasury Check and/or Obligation*.

### **C. Administrative Errors**

The borrower is responsible for correcting any errors made in the administration of the RA program which are made by the borrower or the borrower's authorized management agent. Errors in computation or other unauthorized use of RA will require, at a minimum, the repayment of incorrectly advanced RA funds. Agency requirements regarding unauthorized assistance as established under 7 CFR 3560, subpart O, apply whenever any RA has been incorrectly advanced.

If the error or unauthorized use of RA appears to be deliberate or intentional, the State Director will refer the case to the OGC. For more information on unauthorized assistance, please refer to the Project Servicing Handbook, Chapter 9.



## 8.10 ASSIGNING RENTAL ASSISTANCE TO TENANTS AND APPLICANTS [7 CFR 3560.257]

Because RA is limited, the Agency has established procedures to ensure that it is distributed consistently and to the most needy households.

### A. Eligible Households

Households which are eligible for RA are those:

- With very low or low incomes who are eligible to live in multi-family housing projects;
- Whose net tenant contribution determined in accordance with 7 CFR 3560.256(d) is less than the current basic rent for the unit;
- Whose head of household is a U.S. citizen or a legal alien as defined in 7 CFR 3560.11;
- Who meet the occupancy rules established by the borrower in accordance with 7 CFR 3560.155(e); and
- Who have a signed an unexpired tenant certification form on file with the borrower.

To determine priority for assigning an available RA unit in an operational project, the borrower must update the latest *Form RD 1944-29, Worksheet for Credit and Rental Assistance* for the project as of the date the unit is available, ensuring that columns 3 through 9 of part II are current and accurate.

### B. Priorities in Existing Projects

When assigning available RA, borrowers must use the priorities identified in Exhibit 8-2.

#### Exhibit 8-2

##### Five Priorities for Assigning Rental Assistance

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• First priority is always to eligible very low-income tenants paying the highest percentage of their adjusted annual income in shelter costs.</li> <li>• Second priority is to very low-income applicants on the waiting list, considering the applicant's unit size and type needed.</li> <li>• Third priority is to eligible low-income tenants paying the highest percentage of their adjusted annual income in shelter costs.</li> <li>• Fourth priority is to eligible low-income applicants on the waiting list.</li> <li>• Final priority is to nonelderly households in an elderly project or to nonfarmworkers living in labor housing.</li> </ul> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

In order to provide RA to the third, fourth, and final priority categories, a borrower must fully document that either there are no very low-income households in the market area, or fully document that occupancy by low-income households is limited as follows:

- For projects occupied on or after November 30, 1983, no more than five percent of the units in the project are occupied by low-income households; or
- For projects occupied before November 30, 1983, no more than 25 percent of the units in the project are occupied by low-income households.

Borrower documentation of these circumstances must be kept in the borrower's files and made available to the Servicing Official upon request.

In the event of a high vacancy and as part of a work-out agreement, very low-income applicants may be selected over existing tenants.

### **C. Assigning RA in Newly Constructed Units**

A borrower with RA units for a newly constructed project should accept applications for occupancy during the construction phase of the project, after the preconstruction conference has been held. The names of the applicants should be placed on a waiting list. During the initial rent-up period, the following priorities will apply:

- Until all the RA units have been assigned, a number of apartment units in the project equal to the number of RA units will be initially reserved for eligible tenants who qualify for RA, even if there are applications on other lists that applied earlier. Applications qualifying for RA will be considered according to the priority established for existing projects, by passing those applicants on the waiting list whose income is above the low-income limits for the area. The remaining units equal to the number of units that will not be subsidized with RA can be rented simultaneously to other applicants.
- If a substantial number of apartment units reserved to be used with RA units remain vacant after initial rent-up and the borrower could rent those units to applicants not eligible for RA, the borrower may request a transfer of unused RA units. However, applicants not eligible for RA cannot be selected to occupy units initially reserved to be used with RA until the unused RA units are transferred.
- If there are still vacant units, those applicants bypassed because they did not qualify for RA will be considered for occupancy on a first-come, first-served basis.

### **D. Continued Eligibility**

Eligible tenants receiving the benefits of RA may continue receiving such benefits as long as they remain eligible for occupancy, are eligible for RA under 7 CFR 3560.254(c)(2), and RA units are available. Thus, if tenants who have been receiving RA have an increase in income as that that they are now earning moderate

incomes, they may continue to receive RA so long as the basic rent is 30 percent or more of their adjusted annual income.

#### **E. Timing of RA Assignment**

Rental assistance is paid to the borrower on the first of the month based on the prior month's occupancy.

When a tenant who has been receiving RA vacates the project, the borrower must immediately assign that unit of RA to the next existing eligible tenant or applicant on the waiting list.

When a tenant receiving RA vacates before the end of the month and the borrower reassigns the RA, the Agency will provide the borrower RA for the newly designated tenant starting on the first of the following month.

Applicants who move into the RA unit other than on the first of the month will pay a prorated rent based on their rental assistance. For example, if basic rent is \$200 and the tenant's monthly contribution with RA will be \$120, the prorated share of the tenant's rent for the month if he or she moves in mid-month would be \$60.

Tenants who are assigned RA other than on the first of the month do not pay a prorated share of rent. Rather, they receive the benefit of the RA and begin their reduced payments the following month.

The Agency may establish a grace period by which a tenant must take physical occupancy of a unit with rental assistance.

#### **F. Incorrectly Assigned RA**

Incorrectly assigned RA is viewed as unauthorized assistance and handled in accordance with the requirements established under 7 CFR 3560, subpart O.

When the tenant has correctly reported income and household size, but RA was assigned to a household in error, that tenant's RA benefit should be canceled and reassigned. Incidents involving incorrect reporting are handled in accordance with the unauthorized assistance requirements established under 7 CFR 3560, subpart O.

Before the borrower notifies the tenant, the borrower or management agent shall review the case with the Loan Servicer. If the Loan Servicer verifies that an error has been made based on information available at the time the unit was assigned, the tenant will be given 30 days written notice that the unit was assigned in error and that the RA benefit will be canceled effective on the next monthly rental payment due date after the end of the 30-day notice period. It should be noted that some states require a 60-day notice of rent increases, in which case the written notice must be extended to 60 days. The borrower will also notify the tenant in writing that:

- The tenant has the right to cancel the lease based on the error made by the borrower and the loss of benefit to the tenant.
- The RA granted in error will not be recaptured from the tenant.
- The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. If the facts are accurate and the tenant cannot produce further evidence proving eligibility for RA, there will be no appeal for the decision. If the tenant feels there is justification for further review, the borrower must give the tenant appeal rights under 7 CFR 3560.160.

The RA unit will be reassigned to the next eligible household, based on *Form RD 1944-29* from which the original priority was established, when the unit was erroneously assigned. The RA will not be retroactive unless the reassignment was based on an appeal by the tenant. Retroactive RA may not exceed the project's remaining RA obligation balance.

Tenants may appeal determination of ineligibility for available RA under 7 CFR 3560.160. See paragraph 1.8 of Chapter 1 for information on the appeals process.

#### **G. Dealing with Tenants Who Attempt to Receive RA Simultaneously in Two Different Projects**

A tenant may not receive RA in two different multi-family projects at the same time. If a tenant applies for RA in two different projects simultaneously, the RA is assigned to the project in which the tenant physically occupied a unit on the first day of the month. If part of the household is occupying a unit and the tenant attempts to occupy a seasonal unit in another project, MFIS will identify the duplicate tenancy through the tenant's social security number. In such a case, the project that the household is occupying is eligible for RA, while the seasonal unit the tenant is occupying is not eligible.

### **8.11 TENANT PAYMENTS [7 CFR 3560.256(d)]**

#### **A. Rents**

Tenants receiving RA must pay the net tenant contribution toward rent, which will not exceed the higher of:

- 30 percent of monthly adjusted income, with an adjustment for any utility allowance; or
- 10 percent of gross monthly income, with an adjustment for any utility allowance.

#### **B. Utilities**

The utility allowance for a project with RA is determined as it is for any other project – on the Annual Utility Allowance Review Form. As for non-RA projects, the utility allowance is reviewed annually for accuracy and changes are made when necessary.

When the tenant is billed directly for utilities, rent paid by the tenant receiving RA will be the difference between the established utility allowance and the net tenant contribution as determined by 7 CFR 3560.203.

- Example: Assume a basic rent of \$250 and a utility allowance of \$50. Patty Duke's adjusted monthly income is \$400. Thirty percent of her adjusted income is \$120. Fifty dollars is deducted from the \$120 to allow her to pay her utilities, leaving her a net tenant contribution of \$70 for rent to the borrower. The Agency pays RA to the borrower on behalf of Patty Duke in an amount of \$180 to total the \$250 basic rent.

When utilities are paid by the household receiving RA and the net tenant contribution is less than the allowance for utilities, the borrower will pay the household the difference between the utility allowance and net tenant contribution.

- Example: Assume a basic rent of \$250 and a utility allowance of \$50. Jane Ronda's adjusted monthly income is \$160. Thirty percent of her adjusted monthly income is \$48, which is less than the utility allowance. The Agency will pay \$252 in RA to the borrower to cover the \$250 basic rent and the extra \$2 that the borrower must provide to the tenant to allow her to meet the \$50 utility allowance.

In a project where the borrower pays all utilities, the tenant rent will be the net tenant contribution as per 7 CFR 3560.203 up to the approved rent for the rental unit being occupied.

- Example: In a project where the basic rent is \$300 and there is no utility allowance, RHS would pay the borrower \$180 for Patty Duke, who would pay the whole \$120 in rent, totaling the required rent payment of \$300. For Jane Ronda, the Agency would pay \$252 to the borrower in RA and Ms. Ronda would contribute her \$48 to make the total \$300 rent payment.

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## **SECTION 3: OTHER RENTAL SUBSIDIES**

### **8.12 HUD RENTAL SUBSIDY [7 CFR 3560.260]**

The Agency encourages the use of HUD Section 8 vouchers.

#### **A. Project-Based Assistance**

Tenants in Section 8/515 units must pay rents and utility allowances in accordance with HUD requirements.

#### **B. Tenant-Based Assistance**

Families using vouchers must be initially eligible as per program rules (7 CFR 3560.152). The public housing authority issuing the vouchers will be responsible for an annual examination of household income and family composition. The public housing authority will adjust the housing assistance payments made on behalf of the family to reflect any changes in the family's monthly adjusted income, size, or composition.

For tenants with HUD vouchers, the borrower must set the rent for each unit occupied by a voucher holder at the basic rent or the rent standard set by the public housing agency, whichever is higher. The borrower must remit the value of the voucher exceeding the basic rent up to the note rate rent to the Agency. The public housing agency distributing the Section 8 subsidy may set the utility allowance.

Once a HUD assistance contract expires, recertification responsibility reverts to the borrower and Agency form and income verification and certification requirements apply.

### **8.13 OTHER SOURCES OF RENTAL SUBSIDY [7 CFR 3560.260]**

The Agency may authorize other types of rental subsidies to be used in new or existing projects but will make no commitment to providing RA at the expiration of the project-based rental subsidy agreement from other sources.

#### **A. Agency Requirements for New Construction Projects Proposed with Non-Agency Rental Subsidy**

In order for the Agency to consider a new project with non-Agency rental subsidy, the applicants must demonstrate that:

- A market exists for the assistance and at income levels that would benefit from the subsidy being provided.
- Once the rental subsidy is no longer available, an adequate rental market exists for the project without assistance.
- Tenants will not be displaced at the end of the subsidy agreement.

Applicants will specify how they intend to meet the above requirements through two documents: the memorandum of understanding with the provider of the RA and the Project-Based Rental Subsidy Agreement.

## **B. Formalizing the Project-Based Rental Subsidy**

Rental subsidy for new and existing projects is formalized through two main documents: the memorandum of understanding, which is between the Agency and the provider of the rental subsidy, and the Project-Based Rental Subsidy Agreement, which is the instrument agreement involving the tenant, borrower, and provider of assistance.

### ***1. Memorandum of Understanding***

The Agency must enter into a memorandum of understanding with the provider of the rental subsidy to make sure that the government's interests are secure. This memorandum of understanding must include the following provisions:

- The reason for providing the project-based rental subsidy and its intended purpose.
- The length of time the project-based rental subsidy will be provided.
- Actions to be taken at the end of the project-based rental subsidy agreement to minimize the effect on tenants losing the rental subsidy and to avoid displacement.
- A copy of the proposed project-based rental subsidy agreement.

### ***2. The Project-Based Rental Subsidy Agreement***

The Project-Based Rental Subsidy Agreement is the instrument of agreement involving the tenant, borrower, and provider of assistance.

The Agency will not be a party to the Project-Based Rental Subsidy Agreement nor have any responsibilities under the agreement. However, the Loan Servicer must ensure that the Project-Based Rental Subsidy Agreement provides that:

- The rental subsidy payments will be paid directly to the tenants or deposited to a separate project operating account established for this purpose. The tenants must be advised of the amount and source of the subsidy through the lease or supplement to the lease.
- The life of the Project-Based Rental Subsidy Agreement must be five years and sufficient funds must be set aside in a way that ensures availability of project-based rental subsidy for this term. The method of supplying the funds must be clearly set forth and acceptable to the Agency.
- During the term of the Project-Based Rental Subsidy Agreement, the provider must make available the subsidy amounts required at least annually.



**C. Low-Income Housing Tax Credit Projects**

For projects with low-income housing tax credits, if the project-based rental subsidy term is less than the low-income housing tax credit compliance period, the borrower must demonstrate the marketability of the project-based rental subsidy units by either:

- Demonstrating that there are sufficient households within the low-income housing tax credit income limits to support the units without rent overburden; or
- Certifying that the targeted percentage of low-income housing tax credit units (not the minimum set-aside option) does not include the project-based rental subsidy units, so that the units will be marketable to households in all Agency program eligible income ranges.

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## **SECTION 4: LABOR HOUSING REQUIREMENTS FOR RENTAL ASSISTANCE**

### **8.14 OFF-FARM LABOR HOUSING**

In the Off-Farm Labor Housing program, Rental Assistance (RA) is assigned in the same manner as described in this chapter for the Section 515 program. Very low-income households are eligible to receive RA prior to low-income households. However, when assigning RA in the Farm Labor Housing program, borrowers should make the assignment based on the order of occupancy priority as specified in Chapter 6, Section 9. In addition, RA for Off-Farm Labor housing is calculated based on a note rate of one percent.

The Agency may give rental assistance to units in dormitory-style Off-Farm Labor Housing projects. The actual rent amount must not exceed the CRCU for that bedroom or unit. If two people share a dormitory room, the income of each co-tenant is included in determining the total tenant portion of the rent for that room. Neither person pays more than 30 percent of his or her adjusted gross income for rent. The balance of the rent for that unit is covered by rental assistance.

### **8.15 ON-FARM LABOR HOUSING**

On-Farm Labor Housing tenants are not eligible to receive Rental Assistance.

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## **ENDNOTES**

<sup>1</sup> RHS: There does not seem to be a good definition of “habitable”, even in Ex. H of 1944-E, which refers to damage rendering a unit “unmarketable,” thereby making it ineligible for interest credit. How about linking habitability to the physical inspections worksheet so we have some concrete definition of habitable?